

AMENDED IN SENATE APRIL 5, 2005

SENATE BILL

No. 719

Introduced by Senators Romero and Aanestad

February 22, 2005

~~An act relating to vehicles. An act to amend Section 13955 of the Government Code, relating to crime victims, and making an appropriation therefor.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 719, as amended, Romero. Public agency: liability: immunity.

Under existing law, a public agency employing peace officers that adopts a written policy on vehicular pursuits complying with specific standards is immune from liability for civil damages for personal injury to, or the death of, any person or damage to property resulting from the collision of a vehicle being operated by an actual or suspected violator of the law who is being, has been, or believes he or she is being, or has been, pursued by a peace officer employed by the public entity in a motor vehicle.

This bill would declare the intent of the Legislature to enact appropriate legislation to develop a policy governing vehicular pursuits by law enforcement to protect the public safety, lives, and property of the people of the state.

Existing law provides for compensation to crime victims, as specified, from the Restitution Fund, a continuously appropriated fund.

This bill would include as qualifying as a crime victim for those purposes, injury or death caused by any party where a peace officer is operating a motor vehicle in an effort to apprehend a suspect, and the suspect is evading, fleeing, or otherwise attempting to elude the peace officer.

By expanding the uses of a continuously appropriated fund, this bill would make an appropriation.

Vote: ~~majority~~^{2/3}. Appropriation: ~~no~~ yes. Fiscal committee: ~~no~~ yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. (a) The Legislature finds and declares the
2 following:

3 (1) Law enforcement officers in California engage in
4 thousands of pursuits each year, many resulting in accidents,
5 property damage, serious injuries, and death to innocent third
6 parties, police, and fleeing suspects.

7 (2) California leads the nation in the number of innocent
8 bystanders killed in pursuits. A study by the National Highway
9 Traffic Safety Administration (NHTSA) indicated that in 2001
10 there were 51 deaths in California that resulted from police
11 pursuits. Twenty-two of the 51 deaths were innocent bystanders.

12 (3) Pursuit driving is a dangerous activity that must be
13 undertaken with due care and with the understanding of specific
14 risks as well as the need for realistic methods to apprehend a
15 fleeing suspect.

16 (b) It is, therefore, the intent of the Legislature to enact
17 appropriate legislation to develop a policy governing vehicular
18 pursuits by law enforcement to protect the public safety, lives,
19 and property of the people of the State of California.

20 (c) (1) *The Legislature also finds and declares that Section*
21 *1202.4 of the Penal Code requires a court to impose, in every*
22 *case where a person is convicted of a crime, a separate and*
23 *additional restitution fine that is required to be deposited in the*
24 *Restitution Fund of the State Treasury unless it finds compelling*
25 *and extraordinary reasons for not doing so and states those*
26 *reasons on the record.*

27 (2) *It is the intent of the Legislature to allow an individual to*
28 *be compensated from the Restitution Fund if that individual's*
29 *injury or death is caused by any party where a peace officer is*
30 *operating a motor vehicle in an effort to apprehend a suspect and*
31 *the suspect is evading, fleeing, or otherwise attempting to elude*
32 *the peace officer.*

1 *SEC. 2. Section 13955 of the Government Code is amended to*
2 *read:*

3 13955. Except as provided in Section 13956, a person shall
4 be eligible for compensation when all of the following
5 requirements are met:

6 (a) The person for whom compensation is being sought is any
7 of the following:

8 (1) A victim.

9 (2) A derivative victim.

10 (3) A person who is entitled to reimbursement for funeral,
11 burial, or crime scene cleanup expenses pursuant to subdivision
12 (i) of Section 13957.

13 (b) Either of the following conditions is met:

14 (1) The crime occurred within the State of California, whether
15 or not the victim is a resident of the State of California. This
16 paragraph shall apply only during those time periods during
17 which the board determines that federal funds are available to the
18 State of California for the compensation of victims of crime.

19 (2) Whether or not the crime occurred within the State of
20 California, the victim was any of the following:

21 (A) A resident of the State of California.

22 (B) A member of the military stationed in California.

23 (C) A family member living with a member of the military
24 stationed in California.

25 (c) If compensation is being sought for a derivative victim, the
26 derivative victim is a resident of California, or resident of another
27 state, who is any of the following:

28 (1) At the time of the crime was the parent, grandparent,
29 sibling, spouse, child, or grandchild of the victim.

30 (2) At the time of the crime was living in the household of the
31 victim.

32 (3) At the time of the crime was a person who had previously
33 lived in the household of the victim for a period of not less than
34 two years in a relationship substantially similar to a relationship
35 listed in paragraph (1).

36 (4) Is another family member of the victim, including, but not
37 limited to, the victim's fiancé or fiancée, and who witnessed the
38 crime.

39 (5) Is the primary caretaker of a minor victim, but was not the
40 primary caretaker at the time of the crime.

1 (d) The application is timely pursuant to Section 13953.

2 (e) (1) Except as provided in paragraph (2), the injury or
3 death was a direct result of a crime.

4 (2) Notwithstanding paragraph (1), no act involving the
5 operation of a motor vehicle, aircraft, or water vehicle that results
6 in injury or death constitutes a crime for the purposes of this
7 chapter, except when the injury or death from such an act was
8 any of the following:

9 (A) Intentionally inflicted through the use of a motor vehicle,
10 aircraft, or water vehicle.

11 (B) Caused by a driver who fails to stop at the scene of an
12 accident in violation of Section 20001 of the Vehicle Code.

13 (C) Caused by a person who is under the influence of any
14 alcoholic beverage or drug.

15 (D) Caused by a driver of a motor vehicle in the immediate act
16 of fleeing the scene of a crime in which he or she knowingly and
17 willingly participated.

18 (E) Caused by a person who commits vehicular manslaughter
19 in violation of subdivision (c) of Section 192 or Section 192.5 of
20 the Penal Code.

21 *(F) Caused by any party where a peace officer is operating a*
22 *motor vehicle in an effort to apprehend a suspect, and the*
23 *suspect is evading, fleeing, or otherwise attempting to elude the*
24 *peace officer.*

25 (f) As a direct result of the crime, the victim or derivative
26 victim sustained one or more of the following:

27 (1) Physical injury. The board may presume a child who has
28 been the witness of a crime of domestic violence has sustained
29 physical injury. A child who resides in a home where a crime or
30 crimes of domestic violence have occurred may be presumed by
31 the board to have sustained physical injury, regardless of whether
32 the child has witnessed the crime.

33 (2) Emotional injury and a threat of physical injury.

34 (3) Emotional injury, where the crime was a violation of any
35 of the following provisions:

36 (A) Section 261, 262, 271, 273a, 273d, 285, 286, 288, 288a,
37 288.5, or 289, or subdivision (b) or (c) of Section 311.4, of the
38 Penal Code.

1 (B) Section 270 of the Penal Code, where the emotional injury
2 was a result of conduct other than a failure to pay child support,
3 and criminal charges were filed.

4 (C) Section 261.5 of the Penal Code, and criminal charges
5 were filed.

6 (D) Section 278 or 278.5 of the Penal Code, where the
7 deprivation of custody as described in those sections has endured
8 for 30 calendar days or more. For purposes of this paragraph, the
9 child, and not the nonoffending parent or other caretaker, shall be
10 deemed the victim.

11 (g) The injury or death has resulted or may result in pecuniary
12 loss within the scope of compensation pursuant to Sections
13 13957 to 13957.9, inclusive.